

COMMONWEALTH OF KENTUCKY
JEFFERSON CIRCUIT COURT
DIVISION __
CASE NO. 24-CI-

THE KENTUCKY DEMOCRATIC PARTY

PLAINTIFF

v.

BOBBIE HOLSCLAW, IN HER OFFICIAL CAPACITY
AS JEFFERSON COUNTY CLERK, and the
JEFFERSON COUNTY BOARD OF ELECTIONS

DEFENDANT

COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

Plaintiff, The Kentucky Democratic Party, by and through counsel, submit this Complaint for Declaratory and Injunctive Relief, and allege as follows:

INTRODUCTION

1. This action seeks a declaration that Defendants are violating KRS 118.035 and Section 6 of the Kentucky Constitution by failing to administer elections in a manner that keeps polls open and accessible to Kentucky voters from 6 a.m. to 6 p.m.

2. Extending polling hours in Jefferson County to 8 p.m. is necessary and appropriate because Defendant is depriving voters in Jefferson County of their fundamental right to vote.

3. Plaintiff seeks immediate injunctive relief to prevent Defendant from denying Jefferson County voters their right to vote in accordance with Kentucky law. Plaintiff also requests any additional relief necessary to make such relief meaningful, including the extension of the voting hours to 8 p.m. in order to allow voters that were denied the right to vote by Defendants' administrative delays to cast their ballot.

PARTIES

4. Plaintiff The Kentucky Democratic Party (“KDP”) is an association of Democratic voters seeking to help Democrats win elections in Kentucky. KDP has associational standing to bring the claims herein because its members would have standing to sue in their own right and the interests sought to be protected through this litigation are germane to the purpose of the KDP. KDP’s headquarters is in Franklin County.

5. Defendant is the Jefferson County Clerk and Chair of the Jefferson County Board of Elections. As such, Defendant is charged with, among other things, administering the election laws of Jefferson County and ensuring that qualified voters in that county are able to cast their vote.

JURISDICTION AND VENUE

6. This Court has jurisdiction over this action pursuant to Section 112(5) of the Kentucky Constitution, KRS 23A.010, and KRS 418.040.

7. Venue in this Court is proper because the acts alleged in this Complaint occurred in Jefferson County.

APPLICABLE LAW

8. Section 6 of Kentucky’s Constitution guarantees “[a]ll elections shall be free and equal.”

9. KRS 118.035 states Kentucky’s “polls shall be opened on the day of a primary, special elections, or regular election at 6 a.m., prevailing time, and shall remain open until each voter who is waiting in line at the polls at 6 p.m., prevailing time has voted.”

FACTS

10. Today, November 5, 2024, the Commonwealth of Kentucky is conducting general elections.

11. Kentucky law requires that polls “be opened on the day of a...regular election at 6 a.m., prevailing time, and shall remain open until each voter who is waiting in line at the polls at 6 p.m., prevailing times, has voted.” KRS 118.035.

12. Significant county-wide delays in election procedures began almost immediately at 6 a.m. this morning. *See* Rosalind Welch Affidavit.

13. Polls opened at 6 a.m. as required. However, poll workers e-poll books—which contain the list of qualified voters in a given precinct—immediately failed. The machines shut down, crashed, or otherwise erred in finding voters such that there were numerous instances of voters unable to be checked-in and issued ballots. *Id.*

14. System crashes prevented poll workers from processing voter check-in approximately every 3 minutes for the first three and one half hours of voting. *Id.*

15. For some time, the system needed to be restarted after checking in each voter. *Id.*

16. The Jefferson County Clerk’s office directed poll workers to stop scanning voter identification cards, and suggested that should resolve the issues. It did not. *Id.* The e-poll books continued to crash after 3-4 voters were checked-in. *Id.*

17. The County Clerk’s office sent an employee to Hartstern Elementary around 9:30 a.m. The employee turned off the internet router, temporarily shutting down voter check-in. After a system reboot, poll workers were able to process voters.

18. In effect, poll workers ability to process voters stopped each time the e-poll books crashed. *Id.* The were rendered inoperable or several minutes and crashed dozens, perhaps, hundreds, of times. *Id.*

19. Upon information and belief, these issues were not limited to Hartstern Elementary. *See* Logan Gatti Affidavit.

20. As a result, polling locations across Jefferson County have not been continuously opened as required by KRS 118.035 and the fundamental rights of qualified voters in Jefferson County are being infringed.

21. Defendants' conduct is causing irreparable harm and incalculable damage to Plaintiff and requires immediate injunctive relief. The evidence establishes that (1) Plaintiff presents "a substantial possibility that Plaintiff will ultimately prevail; (2) Plaintiff will be irreparably harmed without relief; and 3) the equities require injunctive relief.

22. Plaintiff requests this Court grant immediate injunctive relief to enjoin Defendants from continuing to violate Kentucky's election laws and deprive Jefferson County voters of their fundamental rights.

CAUSE OF ACTION

Count I – Declaratory and Injunctive Relief

23. Plaintiff incorporates by reference the preceding paragraphs of the Complaint as if fully set forth herein.

24. This is an actual and justiciable controversy with respect to enforcement of Kentucky's requirements for the conduct of elections in Jefferson County.

25. For the reasons set forth above, Plaintiffs are likely to succeed on their claims. Defendants' actions are plain violations of Section 6 of Kentucky's Constitution and KRS 118.035.

26. Plaintiff's member's rights are being violated. They will suffer immediate and irreparable harm because they are being deprived of their right to vote by Defendants' administrative errors.

27. There is no adequate remedy at law to enforce Plaintiff's member's right to vote without the requested relief.

28. The strong public interest in ensuring every Kentuckian's right to vote weighs in favor of granting Plaintiff's request for injunctive relief.

29. Plaintiff is entitled to temporary and permanent injunctive relief, as set forth below.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs respectfully request the following relief:

- A. A Judgment on Plaintiff's Cause of Action;
- B. A Temporary and Permanent Injunction enjoining Defendant from: closing the polling locations in Jefferson County before 8 p.m.
- C. A declaratory judgment that Defendant violated KRS 118.035 by closing the failing to properly operate polling locations between 6 a.m. and 6 p.m.
- D. All other relief to which the Plaintiffs may be entitled, including their costs and expenses incurred herein.

Dated: November 5, 2024

Respectfully submitted,

/s/ William R. Adams
William R. Adams
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Counsel for The Kentucky Democratic Party

COMMONWEALTH OF KENTUCKY
JEFFERSON CIRCUIT COURT
DIVISION 7
CIVIL ACTION NO. 24-CI-____

KENTUCKY DEMOCRATIC PARTY

PLAINTIFF

v.

BOBBIE HOLSCLAW, IN HER OFFICIAL CAPACITY
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JEFFERSON COUNTY BOARD OF ELECTIONS

DEFENDANTS

DECLARATION OF ROSALIND WELCH

Comes now the Affiant, Rosalind Welch, and after being duly sworn states as follows:

1. I am the Clerk for I169 at Hartstern Elementary.
2. I am over 18 years old.
3. I and other election workers arrived at Hartstern Elementary 5:15 a.m. and set up all systems for voting to begin at 6:00 a.m., in accordance with our training from the County Clerk's office.
4. Polls opened at 6:00 a.m. and our e-poll books immediately began to fail. The machines shut down, crashed or otherwise had errors in finding voters such that there were numerous periods of time when we were unable check-in voters or issue ballots. I do not know the total amount of time we were unable to provide these services, but system crashes prevented us from processing voter check-in approximately every 3 minutes over the course of approximately 3 hours and 30 minutes. For at least one prolonged period, the system had to be restarted after every voter was checked-in.

5. The County Clerk's office told us to stop scanning voter identification cards, but that did not solve the issue. The e-poll book system continued to crash with every 3 or 4 voters who were checked-in. The most voters we were able to check-in at any given time was 8 before the system crashed. Even then, it was slow and glitchy.

6. The County Clerk's office sent an employee around 9:30 a.m. The employee turned off the internet router. After a subsequent system reboot, we were able to process voters normally.

7. The longest wait time we experienced was approximately 2 hours and 30 minutes due to multiple technical errors.

8. Effectively, our ability to process voters stopped with every time the e-poll books crashed and became unusable for a certain period of time. They crashed dozens, if not hundreds, of times.

I declare under penalty of perjury that the foregoing information is true and correct.

Dated: November 5, 2024

s/ Rosalind Welch (w. permission)

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DEFENDANTS

DECLARATION OF LOGAN GATTI

Comes now the Affiant, Logan Gatti, and after being duly sworn states as follows:

1. I am the Chair of the Louisville Jefferson County Democratic Party.
2. I am over 18 years old.
3. As the Chair of the Louisville Jefferson County Democratic Party, I have personally received hundreds of reports via phone calls, online reporting forms, and social media accounts about Jefferson County voters inability to cast their ballots.
4. The reports indicated that malfunctioning machines rendered numerous polling locations unable to process voters and provide them ballots for significant periods of time starting when polls opened at 6 a.m.
5. The reports consistently indicated that voters experienced wait times up to and exceeding 3 hours.
6. Numerous reports indicated that the delays caused many voters to leave the polling location without voting.
7. Reports indicate that approximately a dozen or more polling locations across Jefferson County experienced these issues.

I declare under penalty of perjury that the foregoing information is true and correct.

Dated: November 5, 2024

s/Logan Gatti (w. permission)

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COMMONWEALTH OF KENTUCKY
JEFFERSON CIRCUIT COURT
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THE KENTUCKY DEMOCRATIC PARTY

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v.

MOTION FOR INJUNCTIVE RELIEF

BOBBIE HOLSCLAW, IN HER OFFICIAL CAPACITY
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DEFENDANTS

*** **

The Kentucky Democratic Party (“KDP”), by counsel, files this Motion pursuant to CR 65.01, 65.03, and 65.04 against Defendants Bobbie Holsclaw in her official capacity as Jefferson County Clerk, and the Jefferson County Board of Elections.

BACKGROUND

KDP incorporates by reference the factual allegations in the Complaint. Without waiving or amending any allegations in the Complaint:

Today, November 5, 2024, is general election day in Kentucky. Kentucky law requires that polls be open continuously from 6 a.m. to 6 p.m., prevailing time, to allow for all qualified voters to vote. KRS 118.035(1). All qualified voters in line at 6 p.m. must be given the opportunity to vote and the polling place must be kept open to allow all such voters that opportunity. *Id.* The polling locations in Jefferson County opened on time. However, systemic issues with Jefferson County’s electronic systems caused widespread, hours-long delays. Immediately upon opening at 6 a.m., polling locations across Jefferson County could not check-in voters and distribute ballots. *See* Welch Affidavit (Compl. Ex. 1); Gatti Affidavit (Compl. Ex. 2). The e-polling books crashed after checking-in just a few voters causing wait

lines over three hours long. In effect, these polling locations were not open while e-polling books were not operable and able to check-in voters. These delays caused by the e-polling books crash caused some voters to leave their place in line and forego casting a ballot. Gatti Affidavit. Polling locations across Jefferson County were functionally closed for several hours. Gatti Affidavit.

KDP files this motion for injunctive relief to protect its members—and all Jefferson County voters—fundamental right to vote.

ARGUMENT

I. Standards for Injunctive Relief.

Civil Rule 65.01 grants plaintiffs the right to a temporary injunction that “may restrict or mandatorily direct the doing of an act.” CR 65.01 Pursuant to CR 65.03, a temporary restraining order may be granted.

A court exercising that constitutional duty may award a temporary injunction “when the plaintiff has shown irreparable injury, that the various equities involved favor issuance of the relief requested and that a substantial question exists on the merits.” *Beshear v. Acree*, 615 S.W.3d 780, 829 (Ky. 2020) (citing *Maupin v. Stansbury*, 575 S.W.2d 695, 697 (Ky. Ct. App. 1978)); *see also* CR 65.04(1). This inquiry requires a three-step process. A temporary injunction may be granted if it is clearly shown by verified complaint, affidavit, or other evidence that the movant’s rights are being or will be violated by an adverse party and the movant will suffer immediate and irreparable injury, loss, or damage pending a final judgment in the action, or the acts of the adverse party will tend to render such final judgment ineffectual.

As further stated in *Commonwealth ex rel. Cowan v. Wilkinson*, Ky., 828 S.W.2d 610, 612–613 (1992):

The sufficiency of a verified complaint to support a temporary injunction should be evaluated by the balancing the hardships test which provides that if the complaint shows probability of irreparable injury and equities are in favor of issuance, it is sufficient if the complaint raises serious questions warranting a trial on the merits. If a party requesting a temporary injunction has shown the probability of irreparable injury, presented a substantial question as to the merits and the equities are in favor of issuance, then a temporary injunction should be granted.

The party seeking the injunction must clearly demonstrate either by verified complaint, affidavit, or other proof that harm is likely to occur unless injunction issues; the party seeking injunction must first allege possible abrogation of a concrete personal right. *Id.* at 612. KDP's complaint and attached affidavits easily satisfy these elements.

The Kentucky Supreme Court has articulated a three-part test for satisfying the requirements of CR 65.04: (1) that the movant's remedy will be irreparably impaired absent injunctive relief; (2) that the movant's position presents "a substantial question" on the underlying merits of the case, i.e. that there is a substantial possibility that the movant will ultimately prevail; and (3) that an injunction will not be inequitable, i.e. will not unduly harm other parties or disserve the public. *See Price v. Paintsville Tourism Comm'n*, 261 S.W.3d 482 (Ky. 2008); *see also Rogers v. Lexington-Fayette Urban County Gov't*, 175 S.W.3d 569 (Ky. 2005); *Maupin v. Stansbury*, 575 S.W.2d 695 (Ky. App. 1978). As set forth below, KDP's Motion fulfills each of these criteria and warrants the entry of a temporary injunction against Defendants.

II. Irreparable Injury.

Under Kentucky law, an injury is "irreparable if there is no adequate remedy for it existing at law." *Wallace v. Jackson*, 3 S.W.2d 766, 767 (Ky.1928). "In a democracy, the right to vote is fundamental." *Bay Cnty. Democratic Party v. Land*, 347 F. Supp. 2d 404, 435 (E.D. Mich. 2004) ("Undeniable the Constitution of the United States protects the right of all

qualified citizens to vote, in state as well as federal elections.”). “The public has a strong interest in exercising the fundamental political right to vote.” *Obama for Am. v. Husted*, 697 F.3d 423 (6th Cir. 2012) (collecting cases); *see also*, *Michigan State A. Philip Randolph Inst. v. Johnson*, 209 F. Supp. 3d 935 (E.D. Mich. 2016).

KDP and the voters of Jefferson County will be irreparably harmed if voting hours are not extended at all Jefferson County polling locations until at least 8 p.m. Hundreds of voters have not been able to cast their ballot solely due to the widespread technical issues caused by Defendants at polling locations across Jefferson County. At no fault of their own, voters have been deprived of their right to vote between 6 a.m and 6 p.m because electronic systems operated by Defendant necessary to cast a ballot were not functional. The two-hour extension is necessary to remedy the functional closing of polling locations between 6 a.m. and 9 a.m. election day morning.

III. Substantial Question.

Defendants' are not complying with Kentucky's election laws. *See* KRS 118.035. The allegations in the Complaint and the sworn statements in the attached affidavits make clear that the widespread, systemic technical errors in Jefferson County's election systems have functionally shut down polling locations across the county. These delays are depriving voters of their right to vote. *See* KRS 118.035; Ky. Const. § 6. Statutes setting Kentucky voting hours are “mandatory” and must be followed. *Boone v. Humphrey*, 349 S.W.2d 822, 823 (Ky. 1961).

Technical errors caused by Defendants are violating KRS 118.035 and Section 6 of Kentucky's Constitution. Ky. Const. § 6 (“All elections shall be free and equal.”). This harm will continue and be unremedied if the polling hours are not extended. This Court cannot repair the technical issues in Jefferson County's election systems, but it can extend the hours

for Jefferson Countians to vote and ensure as many Kentuckians as possible are permitted to exercise their fundamental right to vote.

Defendants are also depriving Kentuckians' of their fundamental right to a free and fair election. Ky. Const. § 6. An election is free and equal in Kentucky "only when it is public and open to all qualified electors alike; when every voter has the same right as any other voter; when each voter under the law has the right to cast his ballot and have it honestly counted; when the regulation of the right to exercise the franchise does not deny the franchise itself *or make it so difficult as to amount to a denial*; and when no constitutional right of the qualified elector is subverted or denied him." *Queenan v. Russell*, 339 S.W.2d 475, 477 (Ky. 1960)(emphasis added). In other words, Kentucky election officials' regulations cannot "deny the voting privilege, either directly or by rendering its exercise so difficult and inconvenient as to amount to a denial." *Id.*

In *Smith v. Kelly*, 248 Ky. 370, 58 S.W.2d 621 (1933), it was held that the providing of only one voting place for it was held that providing only one voting place for the holding of an election violates § 6 of the Constitution, where the number of voters was such that there would be insufficient time for all to vote. Similarly, in *Perkins v. Lucas*, 197 Ky. 1, 246 S.W. 150 (1922), a registration statute which allowed only one day each year for registering violated Section 6 because it would "operate to deprive many voters of the opportunity to register" and later cast their ballots.

So to here, Jefferson Countians are being deprived of their right to vote at no fault of their own. The deprivation of rights has been entirely caused by Defendants' administrative errors. When polls opened at 6 a.m. the e-poll books that contain the list of qualified voters in a given precinct immediately crashed. System crashes made it difficult or impossible to

check-in voters and distribute ballots until approximately 9:30 a.m. Welch Affidavit. At one point, the system had to be restarted after checking in each voter. *Id.* The issue could not be resolved until Defendants finally sent a technician to fix the issue at approximately 9:30 a.m.

Defendants' failure to properly administer the election cannot result in the deprivation of Kentuckians' fundamental rights. Only the requested injunctive relief can remedy Defendants' error.

IV. Balancing the Equities.

The equities overwhelmingly favor granting the requested injunctive relief and extending voting hours until at least 8 p.m. The right to vote is sacrosanct. *See Land*, 347 F. Supp at 435; *Husted*, 697 F. 3d. at 425. Voters across Jefferson County are being deprived of their right to vote at no fault of their own. The delays are caused solely by Defendants failures to properly administer the elections. Defendants' have no equitable interest in depriving Jefferson County voters rights. Indeed, Defendants alleged harm should not be considered here when the deprivation of rights was caused by their actions "and done with full knowledge of the plaintiff's rights and with an understanding of the consequences which might ensure." *Wilson Concrete Co. v. County of Sarpy*, 202 N.W.2d 597, 599 (Neb. 1972) (citing Restatement of Torts § 941 and comments); *Accord Ky. Elec. Development Co.'s Receiver v. Wells*, 75 S.W.2d 1088, 1095 (Ky. 1934).

Here, Defendants are solely responsible for the harm caused plaintiffs. Defendants administer elections in Jefferson County, and should be well-aware of the requirement to keep polls open continuously from 6 a.m. to 6 p.m. and must implement processes that facilitate

qualified voters to cast their vote during that time. Equity mandates extending polling hours to remedy Defendants' administrative errors.

CONCLUSION

For the reasons stated herein, this Court should GRANT this motion and the ORDER:

- 1) Defendants' act(s) or failure to act as described above be declared unlawful;
- 2) Defendants be preliminarily and permanently enjoined and restrained from closing the polling locations in Jefferson County before 8 p.m.
- 3) The Court grant such other and further relief as is just and proper.

Respectfully submitted,

s/ William R. Adams

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CERTIFICATE OF SERVICE

It is hereby certified that a true and correct copy of the foregoing was filed via the Court's electronic filing service that caused a copy to be served on all counsel of record.

s/ William R. Adams
Counsel for KDP

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PROPOSED ORDER

The Court, having considered the Kentucky Democratic Party's motion, all responses thereto, and being otherwise sufficiently advised hereby GRANTS the Kentucky Democratic Party's Motion for Injunctive Relief. All Jefferson County polling locations should remain open until 8 p.m.

Date: _____

Judge

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